

IC 27-1-6

Chapter 6. Formation of Domestic Companies

IC 27-1-6-1

Authority to incorporate; excluded kinds of insurance

Sec. 1. Any number of natural persons, not less than seven (7), all of whom are eighteen (18) years of age or older, at least a majority of whom are residents of the state of Indiana and citizens of the United States, may form a corporation under the provisions of this chapter for the purpose of making any kind or kinds of insurance described in any one class set out in IC 27-1-5-1, other than reciprocal, farm mutual, fraternal, and assessment insurance, by complying with the provisions of this chapter.

(Formerly: Acts 1935, c.162, s.61; Acts 1973, P.L.270, SEC.1.) As amended by P.L.252-1985, SEC.15.

IC 27-1-6-2

Applicable rights, powers, privileges, duties, obligations, and liabilities

Sec. 2. Any insurance company incorporated as such under this chapter, and its successors shall have the rights and powers, shall be entitled to the privileges, and shall be subject to the duties, obligations, and liabilities as prescribed in this article.

(Formerly: Acts 1935, c.162, s.62.) As amended by P.L.252-1985, SEC.16.

IC 27-1-6-3

Names; required and prohibited words; similarity of names; change of name

Sec. 3. The name of any company organized under this article shall contain the word "insurance" and the word "company," "corporation" or "incorporated," or shall end with an abbreviation of one of these words, except that the word "company" or the abbreviation "Co." may be used only if that word or abbreviation is not immediately preceded by the word "and," or any substitute therefor.

No company organized under this article shall:

(a) Use as a part of its corporate name the words "United States," "Federal," "government," "official," or any word that would imply that the company was an administrative agency of the state of Indiana or of the United States, or is subject to supervision of any department other than the department of insurance of the state of Indiana.

(b) Take or assume a corporate name the same as, or confusingly similar to, the name of any other insurance company then existing under the laws of this state or authorized to transact business in this state, unless at the same time (1) such other company shall change its corporate name or withdraw from transacting business in this state, and (2) the written consent of such company, signed and verified under oath by its secretary, shall be filed with the department.

Any company organized under this article may change its

corporate name at any time by amending its articles of incorporation in the manner hereinafter provided. The provisions of this section shall not affect the right of any insurance company which is existing under the laws of this state at the time this article takes effect or of any such company which thereafter reorganizes or reincorporates under this article or of any company authorized to transact business in this state at the time this article takes effect to continue the use of its corporate name.

(Formerly: Acts 1935, c.162, s.63.) As amended by Acts 1977, P.L.281, SEC.3.

IC 27-1-6-4

Articles of incorporation; contents

Sec. 4. The incorporators shall execute articles of incorporation, not inconsistent with the provisions of this article, setting forth the following:

- (a) The name of the proposed corporation.
- (b) The post office address of its principal office.
- (c) A precise and accurate statement of the purpose or purposes for which the company is organized, which shall be restricted to the kind or kinds of insurance comprised within one (1) of the classes of insurance specified in IC 27-1-5-1, and that it is organized under this article.
- (d) The term for which it is to continue as a corporation, which may be perpetual.
- (e) In the case of a stock company, the amount of its capital and the aggregate number of shares which the company shall have authority to issue and the par value thereof.
- (f) The amount of paid-in capital with which the company will begin business.
- (g) The plan or principle upon which the business is to be transacted.
- (h) The name, occupation, and post office address of each of the incorporators.
- (i) The names of the first officers and directors, their post office addresses, and their terms of office.
- (j) Any other provisions, consistent with the laws of this state, for the regulation of the business and conduct of the affairs of the company and creating, defining, limiting, or regulating the powers of the company, of the directors, or of the shareholders or any class or classes of shareholders.

(Formerly: Acts 1935, c.162, s.64.) As amended by P.L.252-1985, SEC.17.

IC 27-1-6-5

Publication of notice of intention to organize

Sec. 5. At least ten (10) and not more than twenty (20) days prior to the presentation of the articles of incorporation to the department as provided in section 6 of this chapter, the incorporators shall publish at least once in a newspaper of general circulation, printed

and published in the English language, in the county in which the principal office of the proposed company is to be located, and at least once in a newspaper of general circulation, printed and published in the English language, in the city of Indianapolis, Marion County, Indiana, a notice of intention to organize such a corporation, which publication shall contain the following:

- (a) The name of the proposed company.
- (b) A statement that the proposed company is to be organized under the provisions of this article.
- (c) The general character and class or classes of insurance to be transacted by the proposed company.
- (d) The time when the articles of incorporation will be presented to the department.
- (e) The names, occupations, and addresses of the incorporators.

(Formerly: Acts 1935, c.162, s.65.) As amended by P.L.252-1985, SEC.18.

IC 27-1-6-6

Articles of incorporation; form; execution

Sec. 6. The form of the articles of incorporation shall be prescribed and furnished by the department. The articles of incorporation shall be:

- (1) prepared and signed in triplicate originals by all of the incorporators, or, in the case of a redomestication under IC 27-1-6.5, by the corporate officers if the original incorporators are no longer available;
- (2) acknowledged by at least three (3) of the incorporators or corporate officers before a notary public; and
- (3) presented in triplicate originals to the department at the office of the department.

(Formerly: Acts 1935, c.162, s.66.) As amended by P.L.116-1994, SEC.18.

IC 27-1-6-7

Articles of incorporation; submission to department; proof of publication

Sec. 7. At the time of presenting the articles of incorporation for approval, the incorporators shall file with the department the proof of publication required by section 5 of this chapter. The department shall determine whether the proof of publication conforms with the provisions of section 5 of this chapter and is hereby authorized to approve or disapprove the same. If the department shall disapprove the proof of publication, it shall endorse its disapproval thereon and return the proof of publication and the articles of incorporation to the incorporators. If the department approves the proof of publication, it shall then consider the articles of incorporation.

(Formerly: Acts 1935, c.162, s.67.) As amended by P.L.252-1985, SEC.19.

IC 27-1-6-8

Articles of incorporation; approval or disapproval by department

Sec. 8. The department is hereby authorized, in its discretion, to approve or disapprove the articles of incorporation of the proposed company. If the department shall approve the articles of incorporation of the proposed company, it shall write or stamp, in an appropriate place on each of said triplicate copies of such articles of incorporation, the words "Approved by the department of insurance of the state of Indiana"; and the date of such approval, beneath which shall appear the impression of the seal of the department and the signature of the commissioner.

(Formerly: Acts 1935, c.162, s.68.)

IC 27-1-6-9

Articles of incorporation; submission to attorney general

Sec. 9. In the event the department approves the articles of incorporation of the proposed company, it shall then submit the proposed articles of incorporation to the attorney general for the state of Indiana, who shall examine said articles. If the attorney general finds that the articles of incorporation conform to the provisions of this article and are not inconsistent with the constitution of this state, and of the United States, he shall so certify and shall thereupon return the articles of incorporation to the department with his approval endorsed thereon.

(Formerly: Acts 1935, c.162, s.69.) As amended by P.L.252-1985, SEC.20.

IC 27-1-6-10

Articles of incorporation; submission to secretary of state; filing

Sec. 10. When the articles of incorporation have been approved by the attorney-general and returned to the department, then the department shall present the same to the secretary of state for the state of Indiana. If the secretary of state finds that the articles of incorporation conform to law, he shall indorse his approval upon each of the triplicate copies of the articles, and when all fees have been paid as required by law, he shall file one (1) copy in his office and return the other two (2) copies to the incorporators or their representatives.

(Formerly: Acts 1935, c.162, s.70.)

IC 27-1-6-11

Articles of incorporation; filing certified copy with department; surety bond; permit for completion of organization; procedure

Sec. 11. (a) When the articles of incorporation are returned to the incorporators or their representatives bearing the endorsement of the approval of the secretary of state, as provided in section 10 of this chapter, the incorporators or their representatives shall obtain a certified copy of the articles of incorporation from the secretary of state and file such certified copy with the department.

(b) The incorporators shall also file with the department a surety bond payable to the state of Indiana in the sum of ten thousand

dollars (\$10,000), with surety to be approved by the commissioner or collateral in the sum of ten thousand dollars (\$10,000), as approved by the commissioner, and conditioned upon the faithful accounting to the department on completion of organization and receipt of its certificate of authority from the department, or to its shareholders, members, applicants for policies and creditors, or the trustee, receiver, or assignee of the proposed company duly appointed in any proceedings in any court of competent jurisdiction in the state in accordance with their respective rights in case the organization of the proposed company should not be completed and a certificate of authority should not be procured from the department.

(c) Whenever the incorporators have filed their certified copy of the articles of incorporation and bond as provided in this section, then the department may issue a permit for completion of organization. The company shall have authority under such permit to solicit subscriptions and payments for capital stock, if a stock company, and applications and advance premiums for insurance, if a mutual company, and to exercise such powers, subject to the limitations in this article prescribed, as may be necessary and proper in completing its organization and qualifying itself for a certificate of authority from the department to make the kind or kinds of insurance proposed in its articles of incorporation, provided that such company shall not issue policies or enter into contracts of insurance until it shall have received the certificate of the department authorizing it so to do.

(Formerly: Acts 1935, c.162, s.71.) As amended by P.L.252-1985, SEC.21.

IC 27-1-6-12

Commencement of corporate existence; powers

Sec. 12. Upon the issuance of the permit for completion of organization by the department, the corporate existence shall begin, and thereupon such incorporators and their associates shall become a body corporate with power to sue and be sued, contract and be contracted with, adopt a seal, and do such other acts, subject to the provisions and to the restrictions of this article, as shall be needful to accomplish the purpose of completing its organization, provided, that such company shall not issue policies or enter into contracts of insurance until it shall have received the certificate of the department authorizing it so to do.

(Formerly: Acts 1935, c.162, s.72.) As amended by P.L.252-1985, SEC.22.

IC 27-1-6-13

Requirements for commencing business or incurring indebtedness; liability for violations

Sec. 13. Any company organized under this article shall not transact any business or incur any indebtedness until:

- (a) one (1) of the triplicate copies of the articles of incorporation, bearing the approval of the department and the

attorney general and the endorsement of the approval of the secretary of state, as provided in section 10 of this chapter has been filed for record with the county recorder of the county in which the principal office is located; and

(b) a certified copy of the permit for completion of organization, issued pursuant to section 11 of this chapter, shall be filed for record with the county recorder of the county in which the principal office is located, which certified copy shall be evidence only that the company has been authorized to proceed in the completion of its organization.

If a company transacts any business or incurs any indebtedness in violation of this section, the officers who participated therein and the directors, except those who dissented therefrom and caused their dissent to be filed at the time in the principal office of the company or who, being absent, filed their dissent upon learning of the action, shall be severally liable for the debts or liabilities of the company so incurred or arising therefrom.

(Formerly: Acts 1935, c.162, s.73.) As amended by P.L.252-1985, SEC.23.

IC 27-1-6-14

Stock companies; capital stock and surplus requirements

Sec. 14. (a) A domestic capital stock company that organized before March 7, 1967, must maintain a paid-in capital stock of not less than:

- (1) two hundred thousand dollars (\$200,000), if it markets one (1) or more kinds of insurance under Class I;
- (2) two hundred thousand dollars (\$200,000), if it markets one (1) kind of insurance under Class II, other than Class II(k) insurance;
- (3) three hundred thousand dollars (\$300,000), if it markets two (2) kinds of insurance under Class II, other than Class II(k) insurance;
- (4) four hundred thousand dollars (\$400,000), if it markets three (3) or more kinds of insurance under Class II, other than Class II(k) insurance;
- (5) four hundred thousand dollars (\$400,000), if it markets one (1) or more kinds of insurance under Class III;
- (6) seven hundred fifty thousand dollars (\$750,000), if it markets one (1) or more kinds of insurance under both Class II and Class III; or
- (7) seven hundred fifty thousand dollars (\$750,000), if it markets one (1) or more kinds of insurance under Class II, including Class II(k) insurance.

(b) A domestic capital stock company that organized after March 6, 1967, and before July 1, 1977, must maintain a paid-in capital stock of not less than:

- (1) four hundred thousand dollars (\$400,000), if it markets one (1) or more kinds of insurance under Class I;
- (2) four hundred thousand dollars (\$400,000), if it markets one

(1) or more kinds of insurance under Class II, other than Class II(k) insurance;

(3) four hundred thousand dollars (\$400,000), if it markets one (1) or more kinds of insurance under Class III;

(4) seven hundred fifty thousand dollars (\$750,000), if it markets one (1) or more kinds of insurance under both Class II and Class III; or

(5) seven hundred fifty thousand dollars (\$750,000), if it markets one (1) or more kinds of insurance under Class II, including Class II(k) insurance.

(c) A domestic capital stock company that organized after June 30, 1977, must maintain a paid-in capital stock of not less than one million dollars (\$1,000,000).

(d) A domestic capital stock company must deposit with the department the following percentage of its paid-in capital stock requirement under this section in cash or in obligations of the United States:

(1) Twenty-five percent (25%), if it organized before July 1, 1977.

(2) Ten percent (10%), if it organized after June 30, 1977.

(e) A domestic capital stock company must maintain a surplus of not less than two hundred fifty thousand dollars (\$250,000). However, when it organizes, it must have a surplus of not less than one million dollars (\$1,000,000).

(f) If the commissioner determines that the continued operation of a domestic capital stock company may be hazardous to the policyholders or the general public, the commissioner may, upon the commissioner's determination, issue an order requiring the insurer to increase the insurer's capital and surplus based on the type, volume, and nature of the business transacted.

(Formerly: Acts 1935, c.162, s.74; Acts 1955, c.316, s.1; Acts 1959, c.13, s.1; Acts 1967, c.127, s.2.) As amended by Acts 1977, P.L.282, SEC.1; Acts 1980, P.L.169, SEC.1; P.L.130-1994, SEC.14; P.L.116-1994, SEC.19.

IC 27-1-6-15

Mutual companies; initial subscriptions and premiums; deposits; surplus

Sec. 15. (a) Except as provided in subsection (b), a domestic mutual company that organized before July 1, 1977, must maintain a surplus of not less than two hundred fifty thousand dollars (\$250,000). This subsection does not apply to a standard farm mutual insurance company that is organized under IC 27-5 (before its repeal) or IC 27-5.1.

(b) A domestic mutual company that organized before July 1, 1977, must maintain a surplus of not less than:

(1) seven hundred fifty thousand dollars (\$750,000), if it markets one (1) or more kinds of insurance under both Class II and Class III, other than Class II(k) insurance;

(2) one million dollars (\$1,000,000), if it markets one (1) or

more kinds of insurance under Class II, including Class II(k) insurance; or

(3) one million dollars (\$1,000,000), if it markets one (1) or more kinds of insurance under both Class II and Class III, including Class II(k) insurance.

(c) A domestic mutual company that organized after June 30, 1977, must maintain a surplus of not less than one million two hundred fifty thousand dollars (\$1,250,000). However, when it organizes, it must:

(1) have a surplus of not less than two million dollars (\$2,000,000);

(2) for the one (1) or more kinds of insurance under Class I that it intends to market, have received applications for insurance from not less than four hundred (400) persons, each application for an amount not less than one thousand dollars (\$1,000), and have received the first year's premium due on a policy to be issued on each such application; and

(3) for the one (1) or more kinds of insurance under Class II or Class III that it intends to market, have received applications for insurance covering not less than eight hundred (800) separate risks in not less than forty (40) policies to be issued to not less than forty (40) members, and have received premiums amounting to not less than one hundred thousand dollars (\$100,000) for those policies.

(d) A domestic mutual company must deposit with the department in cash or in obligations of the United States:

(1) twenty-five thousand dollars (\$25,000), if it organized before June 30, 1955;

(2) fifty thousand dollars (\$50,000), if it organized after June 29, 1955, and before March 7, 1967; or

(3) one hundred thousand dollars (\$100,000), if it organized after March 6, 1967.

This subsection does not apply to a standard farm mutual insurance company that is organized under IC 27-5 (before its repeal) or IC 27-5.1.

(e) If the commissioner determines that the continued operation of a domestic mutual company may be hazardous to the policyholders or the general public, the commissioner may, upon the commissioner's determination, issue an order requiring the insurer to increase the insurer's capital and surplus based on the type, volume, and nature of the business transacted.

(Formerly: Acts 1935, c.162, s.75; Acts 1955, c.316, s.2; Acts 1967, c.127, s.3.) As amended by Acts 1977, P.L.282, SEC.2; P.L.130-1994, SEC.15; P.L.116-1994, SEC.20; P.L.129-2003, SEC.1.

IC 27-1-6-16

Extension of charter powers and licenses; limitation of actions

Sec. 16. (a) The charter powers and licenses of any domestic insurers authorized to market one or more kinds of insurance or

reinsurance under Class II or Class III and meeting the requirements set out in section 14 or 15 of this chapter may be broadened and extended hereunder to include the right, power and authority to make any one or more of the kinds of insurance and reinsurance specified in both Class II and Class III of IC 27-1-5-1.

(b) Any domestic company authorized to insure against loss or damage by fire, which has been actively engaged in the fire insurance business continuously for ten (10) years or more, or whose predecessor or predecessors, if any prior to merger or consolidation, shall have been so engaged for such period, may, if it complies with the provisions of this subsection and without complying with the capitalization and surplus requirements of section 14 or section 15 of this chapter, insure against loss or damage to dwellings and appurtenant structures and to the contents thereof and any other personal property of a similar nature of the insured or of the members of his household, resulting from any peril, and may, in connection with making such insurance, also make insurance against the legal liability of the insured or of the members of his household, and for any medical, surgical and hospital expenses of any person other than the insured or such members, arising out of nonbusiness pursuits of the insured or such members or out of the condition of, or acts performed by the insured or such members on such dwellings and appurtenant structures and the real estate on which each is located. Where a company is entitled to make such additional insurance solely by virtue of this subsection, it shall not make such insurance unless it has made reinsurance arrangements satisfactory to the commissioner whereby all of such additional insurance is reinsured with a company which is qualified under IC 27-1 to make reinsurance of such additional kind of insurance. The charter powers and licenses of any domestic insurer meeting the requirements set out in this subsection may be broadened and extended hereunder to include the right, power and authority to make any one or more of the kinds of insurance permitted by this subsection.

(c) No policy issued by a mutual company including a farm mutual insurance company, shall be required to contain a provision limiting the time within which suit against the insurer on such policy must be filed.

(Formerly: Acts 1935, c.162, s.75 1/2; Acts 1947, c.50, s.1; Acts 1957, c.265, s.2; Acts 1967, c.233, s.2.) As amended by Acts 1977, P.L.282, SEC.3; P.L.129-2003, SEC.2.

IC 27-1-6-17

Examination of proposed companies; revocation and renewal of permit and insurance producer's authority

Sec. 17. The commissioner may, personally or through the commissioner's deputies and assistants, examine into the affairs of any such proposed company and inspect its books and papers, and may summon and examine under oath any officer or insurance producer or any person who is or has been connected with such company, and if the commissioner finds the company is violating the

law, or if the company shall not be qualified for a certificate of authority within one (1) year from date of its permit, the commissioner may revoke its permit; and if the commissioner finds an insurance producer of such company has violated the law, the commissioner may revoke the insurance producer's authority, and the commissioner may for the insurance producer's violation revoke the company's permit. Any revocation shall be after notice and hearing. The commissioner may renew any company's permit or agent's authority which the commissioner has revoked.

(Formerly: Acts 1935, c.162, s.76.) As amended by P.L.178-2003, SEC.14.

IC 27-1-6-18

Certificate of authority; issuance; recording

Sec. 18. When the provisions of sections 2 through 17 of this chapter have been complied with, and the department has made an investigation and examination as required in section 17, then the commissioner may issue a certificate of authority under IC 27-1-3-20, which shall license the company to transact only the kind or kinds of insurance specified in its articles of incorporation. The company shall file a certified copy of such certificate of authority for record with the county recorder of the county wherein the principal office is located, which certified copy shall be evidence only that the company is authorized and licensed to transact the class or classes of insurance set out therein.

(Formerly: Acts 1935, c.162, s.77.) As amended by Acts 1977, P.L.283, SEC.1.

IC 27-1-6-19

Bylaws; procedure for adoption

Sec. 19. (a) If the articles of incorporation provide for the adoption of the bylaws by the shareholders, members, or policyholders, the incorporators or a majority of them after the issuance of the certificate of authority, shall call a meeting of the shareholders, members, or policyholders for the purpose of adopting the bylaws, giving at least ten (10) days' notice by mail to each shareholder, member, or policyholder entitled to vote at the time and place of such meeting, unless the giving of such notice be waived in writing by any or all of such shareholders, members, or policyholders, in which case notice shall be given only to such shareholders, members, or policyholders who have not so waived such notice. Such shareholders, members, or policyholders shall meet at the time and place designated and shall adopt the bylaws. After the adoption of such bylaws, the directors named in the articles of incorporation as the first board of directors shall meet at the call of a majority thereof and shall elect officers and transact such other business as may properly come before such board.

(b) If the articles of incorporation do not provide for the adoption of the bylaws by the shareholders, members, or policyholders, then, after the issuance of the certificate of authority, the directors named

in the articles as the first board of directors shall meet at the call of a majority thereof, adopt the bylaws, elect officers, and transact such other business as may properly come before such board.

(Formerly: Acts 1935, c.162, s.78.) As amended by P.L.252-1985, SEC.24.

IC 27-1-6-20 Repealed

(Repealed by P.L.108-1985, SEC.1.)

IC 27-1-6-21

Company domiciled in Indiana; requirements

Sec. 21. (a) A company that is approved by the department after June 30, 2000, to be domiciled in Indiana, must have and maintain in Indiana the following:

(1) A physical presence that provides economic benefit to the state.

(2) Complete records of the company's assets, transactions, and affairs in accordance with methods and systems that are customary or suitable to the kind or kinds of insurance transacted by the company, including all records required under IC 27-1-7-16. Records may be maintained in a form that is physically or electronically available to the department within Indiana.

(b) The commissioner shall determine whether the requirements of subsection (a) are met. In making a determination under subsection (a)(1), the commissioner shall compare and consider the following:

(1) The economic benefit to Indiana and Indiana communities offered by the domestication of the company.

(2) The costs that may be incurred by the state in regulating the company as a domestic company versus a foreign company.

(c) If a domestic company subject to this section fails to comply with the provisions of subsection (a), the commissioner may:

(1) require the company to transfer its domicile under IC 27-1-6.5-2; or

(2) annually impose an additional administrative fee on the company in an amount equal to the difference between the cost of regulating the company as a domestic company and the cost of regulating the company as a foreign company. The fee shall be deposited in the department of insurance fund established by IC 27-1-3-28.

(d) In the case of a company that is part of an insurance holding company system (as defined in IC 27-1-23-1) whose presence provides an economic benefit to the state, the commissioner shall consider the insurance holding company system and any domestic company in the aggregate when making the determination required under subsection (b).

As added by P.L.144-2000, SEC.1.